IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE SIXTH DAY OF AUGUST
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE V.V.S.RAO

WRIT PETITION NO : 13830 of 2004

Between:

M/s. U. Foam Private Limited, Having its Registered Office at 8-15 & 16 Industrial Estate, Sanathnagar, Hyderabad rep. by its Director Sri K. Srivatsan

..... PETITIONER

AND

The Commissioner Kukatpally Municipality,
Kukatpally: RR District, Hyderabad.

.....RESPONDENT

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ or direction one or more in the nature of Writ of Mandamus directing the Respondent not to acquire any portion of the property by demolishing the Compound wall abutting the Bombay National Highway belonging to the Petitioner situated in Plot No. B-7 in the Co Op Industrial Estate, Balanagar, Hyderabad without following the due process of law.

Counsel for the Petitioner: MR.D.MADHAVA RAO

Counsel for the Respondent: Mr.R.Thimma Reddy, Standing Counsel for Municipality

The Court made the following :

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ORDER:

The petitioner claims to be owner of Plot No.B-7, Cooperative Industrial Estate, Balanagar. It appears one Anwaruddin filed a suit against the petitioner, which was dismissed, against which an appeal being A.S.No.102 of 2000 is pending. The petitioner also filed a suit being O.S.No.678 of 2002 on the file of the Principal Junior Civil Judge, Hyderabad, West & South, Rangareddy District for injunction restraining Anwaruddin from interfering with the construction of the petitioner. According to the affidavit, the same was decreed. The petitioner alleges that the respondent Municipality is having plans to widen the road and as part of the road widening scheme, requested the plot owners abutting National Highway to surrender a portion of the land for the purpose. The petitioner was however not given any notice. Therefore, the petitioner got issued a legal notice to the respondent informing that if the land is required for road widening, the same may be acquired after following due process of law under Land Acquisition Act, 1894 and after paying compensation. Even before the action could be taken by the respondent, the present writ petition is filed seeking a writ of mandamus directing the respondent not to acquire any portion of the petitioner's land by demolishing the compound wall.

Heard the learned counsel for the petitioner and the learned Standing Counsel for the respondent – Municipal Corporation.

In **P.Lakshmana Rao v. Executive Officer,** a Division Bench of this Court issued directions to be followed by Municipal authorities, Panchayat authorities and Revenue authorities for acquiring the land for public purpose. Having regard to the decision of the Division Bench, I have considered similar issue in a number of writ petitions and culled out various principles of law to be followed by the Government while acquiring/utilizing the private land for road widening. The principles were reiterated by my learned brother, Sri Justice B.Sudershan Reddy in **M.Madhavi Latha v. Rajendranagar Municipality**. The principles laid down by the Division Bench are as follows.

(1). Where a property is required for public purpose viz., widening of roads or for any other purpose, the authorities straightaway cannot take law into their hands and jump into the premises, dispossess or evict the occupants or demolish the property.

(2). If the authorities concerned want to take action for eviction/dispossession of the

occupants or demolition, they shall issue 60 days' prior notice notifying as to the nature of the property, the property to whom it belongs and the proposed action calling for explanation/objections, if any, from the occupants. On receipt of such objections, if there is any objection as to the ownership of the property, the authorities should determine the extent of encroachment or unauthorised occupation and also determine whether the property in question belongs to Government/any other local self Government or authority or the occupants and pass appropriate orders within three months from the date of receipt of the objections, after affording an opportunity of being heard to the occupants.

(3). In case where demolition of private property has already been made, the authorities shall determine the damages on the basis of the assessment to be made by the Engineer of the Roads and Buildings Department and disburse the amount of damages quantified forthwith.

(4). If the demolition is in respect of local bodies' Government property, the question of damages does not arise. In such an event, the occupant shall be entitled to remove the material used for the construction.

(5). In case of demolition of private property, the authorities concerned shall determine the loss caused to the occupants on the basis of the assessment to be made by the Engineer of R&B Department and on such assessment of damages, the concerned authorities shall take appropriate steps to disburse the amount quantified forthwith.

(6). If there is any claim for grant/assessment of the property, the concerned authorities shall consider the same in accordance with law taking into consideration the eligibility and the entitlement of occupants, after making enquiry and till such claim is decided, there shall be status quo obtaining as on today regarding the structures.

The writ petition is disposed of as above directing maintenance of status quo as on today. No costs.

The relief as prayed cannot be granted.

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(V.V.S.RAO,J)

06.08.2004.

pln

ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1. The Commissioner, Kukatpally Municipality, Kukatpally, RR District, Hyderabad.
2. 2 CD copies.